

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

WARSAW VILLAGE RETIREMENT CENTER

Employer

and

UNITED FOOD AND COMMERCIAL WORKERS  
UNION LOCAL 400

Petitioner

**Case 5-RC-15149**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.<sup>1/</sup>
3. The Petitioner involved claims to represent certain employees of the Employer.<sup>2/</sup>
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:<sup>3/</sup>

All full-time and regular part-time employees, including certified nursing assistants, nursing assistants, dietary aides, dietary cooks and housekeeping employees employed by the Employer at its Warsaw, Virginia facility, excluding all administrators, confidential employees, office clerical employees, all other employees, guards and supervisors as defined in the Act.

**DIRECTION OF ELECTION**

An Election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the

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strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by

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**LIST OF VOTERS**

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

**RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **February 20, 2001**.

Dated February 5, 2001

at Baltimore, Maryland

/S/ WAYNE R. GOLD

Regional Director, Region 5



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1/ Warsaw Village Retirement Center (herein the Employer) failed to appear at the January 26, 2001, hearing. Despite the Employer's refusal to cooperate, the record clearly establishes the Board has statutory jurisdiction in this case. It is appropriate to assert jurisdiction over the Employer and to direct an immediate election among the employees. Tropicana Products, Inc., 122 NLRB 211 (1959).

The Employer, despite proper notice of the hearing herein, did not appear at the hearing. The United Food and Commercial Workers Union Local 400 (herein the Petitioner) filed the petition on January 16, 2001. On January 17, 2001, the Regional Office served the Employer with a copy of the Petition and Notice of Representation Hearing setting the hearing for January 26, 2001. On Monday, January 22, 2001, the Hearing Officer called Catina King, who is listed as the representative of the Employer on the petition, at the number listed on the petition. The Hearing Officer was told she was not present. The Hearing Officer left a message with his name and telephone number and that he was calling about the petition filed with the National Labor Relations Board. Not hearing from Ms. King, on January 23, 2001, at 9:45 a.m., the Hearing Officer again called the telephone number on the petition to speak with her. He was told she was not present, so he left the same message. Again, Ms. King did not return his call. On January 24, 2001, at around 9:30 a.m., the Hearing Officer once again called Ms. King but this time was able to speak with her. Ms. King told the Hearing Officer that he needed to contact the owner of the nursing home, Mirel Chaudhary at (804) 330-8102. Immediately after talking with Ms. King, the Hearing Officer called (804) 330-8102 and asked to speak with Mr. Chaudhary. The Hearing Officer was told that Mr. Chaudhary was not available to take his call. The Hearing Officer left a message with his name and telephone number and that he was calling from the National Labor Relations Board regarding the petition in this case. Since the Hearing Officer did not receive a return telephone call from Mr. Chaudhary, at around 3:30 p.m. he again called (804) 330-8102 and left a message for Mr. Chaudhary with the woman who answered the telephone and also obtained from her a fax number, (804) 330-2938. On January 25, 2001, a Notice of Change in Time and Place of Hearing was served by facsimile on the Employer and on the facsimile number for Mirel Chaudhary, the owner of the Employer. At approximately 1:45 p.m. on January 25, 2001, the Hearing Officer received a telephone call from Catina King. She said that she had been served with a subpoena from the Petitioner and that she was calling to say that she was not the person responsible for responding for the nursing home and that it was the owner, Dr. Chaudhary, who should be responding. The Hearing Officer told Ms. King that a hearing would be held as described in the paperwork that she had received by fax and that she was under subpoena and expected to appear in response to that subpoena. The hearing opened on January 26, 2001, at 10:13 a.m. and closed at 11:21 a.m., without any appearance by or contact from the Employer.

Petitioner's organizer, Tony Perez, and employee Yvonne L. Thomas appeared at the hearing. Both testified about the Employer's operation based on their personal observations and experiences, as well as information available to them. Neither the Petitioner nor the Employer filed a post-hearing brief in this matter.

The National Labor Relations Board's statutory jurisdiction under the National Labor Relations Act extends to all cases involving enterprises whose operations affect interstate commerce. The Board's jurisdiction has been construed to extend to all such conduct as might

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constitutionally be regulated under the commerce clause, subject only to the rule of de minimis. NLRB v. Fainblatt, 306 U.S. 601, 606-607 (1939).

The Board has determined that it best effectuates the policies of the Act, and promotes the prompt handling of cases, to assert jurisdiction in any case in which an employer has refused, upon reasonable request by a Board agent, to provide the Board with information relevant to the Board's discretionary jurisdictional standards where the record at a hearing establishes that the Board has statutory jurisdiction, irrespective of whether the record demonstrates that the employer's business satisfies the Board's discretionary jurisdictional standards. Tropicana Products, 122 NLRB 121, 123 (1959).

The Employer is engaged in the business of operating a retirement center in Warsaw, Virginia. There are approximately 35 residents of the retirement center who rent rooms on a month-to-month basis. The rates range from \$900 per month for a semi-private room with a shared bath to \$1800 per month for a private room with a private bath. The residents are Medicare or Medicaid patients. The food for the facility, which costs \$1500 biweekly, is ordered from a nationwide wholesale food distributor, Monarch. Monarch also services businesses like Kentucky Fried Chicken. Long distance telephone service through the carrier AT&T is available in the residents' rooms.

In 1974 Congress enacted Section 2(14) of the Act to give the Board jurisdiction over "health care institutions." These institutions are defined in Section 2(14) as "any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility or other institution devoted to the care of sick, infirm or aged persons." The intent of Congress was that the Act and its underlying policies "be extended to all health care institutions falling within the above definition, including those medical care facilities whose activities, although they may be local in character, have a substantial impact on commerce." East Oakland Community Health Alliance, Inc., 218 NLRB 1270 (1975). The record here established that a portion of the Employer's revenues derive ultimately from Federal revenue through Medicare or Medicaid payments. As the Board stated in East Oakland Community Health Alliance, Inc., 218 NLRB at 1271, "the Employer's participation in and receipt of moneys through federally supported health care programs adequately demonstrates that the Employer's operations have a substantial effect on commerce, and establishes the required statutory jurisdiction of this Board." I find that the impact of the Employer's operations on commerce is sufficient to warrant the assertion of jurisdiction and that it effectuates the policies of the Act to do so.

2/ Tony Perez, representative of the organizing department of the United Food and Commercial Workers, Local 400, testified about the Petitioner's status as a labor organization. Perez testified that the Petitioner organizes employees, negotiates and services contracts, and provides representation to employees with regard to their terms and conditions of employment.

I conclude that Petitioner is a labor organization within the meaning of Section 2(5) of the Act. The record clearly shows, and I find, that the Petitioner admits employees to membership and represents employees in collective bargaining with employers, concerning wages, hours and working conditions. I find that the Petitioner exists for the purpose, in whole

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or in part, of dealing with employers concerning wages, hours and other terms and conditions of employment, and the Petitioner is a Section 2(5) labor organization. Alto Plastics Mfg. Corp., 136 NLRB 850, 851-852 (1962); Butler Mfg. Co., 167 NLRB 308 (1967); Michigan Bell Telephone Co., 182 NLRB 632 (1970).

3/ At the hearing the Petitioner amended its petition and seeks to represent the following unit:

All full-time and regular part-time employees, including CNAs, Dietary Aides, Dietary Cooks and Housekeeping Employees employed by the Employer at its Warsaw, Virginia facility, excluding all administrators, confidential employees, office clerical employees, all other employees, guards and supervisors as defined in the Act.

There are approximately 25 employees in the petitioned-for unit. There is no history of collective bargaining.

Catina King is the administrator of the facility. She has the authority to discipline, hire and fire employees. The floor supervisor position is held by Melissa \_\_\_\_\_ (last name unknown) who is also the head nurse. Melissa has the authority to discipline employees, approve early departure or late arrivals of employees and days off. Working under Melissa is Valerie \_\_\_\_\_ (last name unknown), who holds the position of coordinator. Valerie has the same authority as Melissa. I find that **Administrator Catina King, Floor Supervisor Melissa, and Coordinator Valerie** are supervisors within the meaning of the Act **excluded** from the unit found appropriate herein and ineligible to vote in the election.

The kitchen is staffed by the dietary cook and a dietary aide. There are two housekeeping employees who clean the rooms, empty the trash and do the floors. There are three certified nursing assistants, one working on each of three shifts, and eighteen nursing assistants who are responsible for patient care at the facility.

In summary, I find the following unit of approximately 25 employees appropriate:

All full-time and regular part-time employees, including certified nursing assistants, nursing assistants, dietary aides, dietary cooks and housekeeping employees employed by the Employer at its Warsaw, Virginia facility, excluding all administrators, confidential employees, office clerical employees, all other employees, guards and supervisors as defined in the Act.